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EXAMINER

VU, THONG H

ART UNIT	PAPER NUMBER
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2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/032,116

Applicant(s)

WALSH ET AL.

Examiner

Thong H. Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/07</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 24-65 are pending.

Response to Arguments

2. Applicant's arguments filed 2/20/07 have been fully considered but they are not persuasive to overcome the prior art.

A. 101 Rejection:

- Applicant argues "take into account the monitoring" and "account number" is supported by the specification:

"[t]he multicast system 200 in FIG. 2 differs from that of FIG. 1 in that there is a web hit monitor 202 and an interaction network 204 ... In this embodiment, the method for increasing a user's perceived access speed to content available from a data network 104 includes measuring user demand for data. using a web hit monitor 202, selecting 110 data to be sent over a shared multicast channel 114 based upon said user demand, collecting the data to be sent 108, optionally sending the collected data to a shared cache 106; sending the data 112 over a multicast network 114, receiving the data by a reception agent 116, filtering the data by the reception agent 116, storing the filtered data in a local cache 118, and retrieving the filtered data from the cache 118 for user consumption" and

"[a]s shown in FIG. 2, the data to be sent over the multicast channel 114 is selected by the group data selection module 110 based upon the information gathered by the web hit monitor module 202. For example, after a predetermined number of clients have requested the same web page then the page is selected to be sent over the multicast channel 114."

- Examiner points out these information are not in the claims language (*emphasis added*). See MPEP. 2111 [R-5]

CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." >The Federal Circuit's en banc decision in Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard:

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and

the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

415 F.3d at 1316, 75 USPQ2d at 1329. See also In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) (Claim 9 was directed to a process of analyzing data generated by mass spectrographic analysis of a gas. The process comprised selecting the data to be analyzed by subjecting the data to a mathematical manipulation. The examiner made rejections under 35 U.S.C. 101 and 102. In the 35 U.S.C. 102 rejection, the examiner explained that the claim was anticipated by a mental process augmented by pencil and paper markings. The court agreed that the claim was not limited to using a machine to carry out the process since the claim did not explicitly set forth the machine. The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from reading limitations of the specification into a claim, to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (The court held that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather, the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.").

Examiner suggests if the applicant consider the information above are important to the invention, they should be incorporated into the main claims, which could advance the prosecution of application.

B. 112 Rejection:

Applicant argues "sponsored data is treated as preferable" is supported by the specification :

"[a]nother example would be where a 'sponsor' policy is available and sponsored data is treated as preferable (e.g., send the linked page as well as the requested page either 'if it belongs to a sponsor and there is a 10% chance of being followed' or 'if it does not belong to a sponsor and there is a 50% chance of it being followed')"

Examiner points out these information are not in the claims language (*emphasis added*). See MPEPE 2111 [R-5]

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IT IS IMPROPER TO IMPORT CLAIM LIMITATIONS FROM THE SPECIFICATION

*"Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment." Superguide Corp. v. DirectTV Enterprises, Inc., 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). See also Liebel-Flarsheim Co. v. Medrad Inc., 358 F.3d 898, 906, 69 USPQ2d 1801, 1807 (Fed. Cir. 2004) (discussing recent cases wherein the court expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment); E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) ("Interpretation of descriptive statements in a patent's written description is a difficult task, as an inherent tension exists as to whether a statement is a clear lexicographic definition or a description of a preferred embodiment. The problem is to interpret claims in view of the specification' without unnecessarily importing limitations from the specification into the claims."); Altiris Inc. v. Symantec Corp., 318 F.3d 1363, 1371, 65 USPQ2d 1865, 1869-70 (Fed. Cir. 2003) (Although the specification discussed only a single embodiment, the court held that it was improper to read a specific order of steps into method claims where, as a matter of logic or grammar, the language of the method claims did not impose a specific order on the performance of the method steps, and the specification did not directly or implicitly require a particular order). See also paragraph *IV. <, below. **>When < an element is claimed using language falling under the scope of 35 U.S.C. 112, 6th paragraph (often broadly referred to as means or step plus function language) **, the specification must be consulted to determine the structure, material, or acts corresponding to the function recited in the claim. In re Donaldson, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994) (see MPEP § 2181- § 2186).*

C. 102 Rejection:

A. Applicant argues the prior art does not teach or suggest:

"...selecting data wherein selection takes into account the monitoring; and
sending the select data over a multicast network"

Examiner points out the prior art taught

The edit menu, which contained data, must be selected (as selecting data) and parameters set to enable monitoring [Bruck col 22 lines 32-47, Fig 13]. Under the remote monitoring system [Bruck col 22 lines 14-67] it was obvious the data was transmitted over a multicast network [Bruck, UDP multicast, col 27 line 6].

B. Applicant argues the prior art does not teach or suggest:

"...a multicast network, selected data through a local proxy..." and

“wherein selection of the data takes into account monitoring of the interaction network”

Examiner points out the prior art taught a multicast network [Bruck, UDP multicast, col 27 line 6]; the local proxy or Gateway [Bruck, col 5 line 39] or firewall [Bruck, local firewall 114, col 19 line 8, Fig 1] and “interaction network” such as the server cluster or gateway exchanged messages [Bruck, col 25 lines 56-67, Fig 14].

C, Applicant argues the prior art does not teach or suggest two network: an interaction network and a separate multicast network.

Examiner points out the prior art taught The interaction network or TCP network [Bruck, col 25 lines 56-67, Fig 14] and a separate multicast network [Bruck, UDP multicast, col 27 line 6].

Thus the rejection is sustained.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 24,28,29,31,35,39,40,42,44,48,49,51,55,59,60,62-65 are rejected because the disclosed invention is inoperative and therefore lacks utility.

“take into account the monitoring” and “account number” are not in specification..

Claims 24,28,29,31,35,39,40,42,44,48,49,51,55,59,60,62-65 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility.

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i.e.: "take into account the monitoring" and "account number"

4. Claims 24,28,29,31,35,39,40,42,44,48,49,51,55,59,60,62-65 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

i.e.: "take into account the monitoring" and "account number".

Claim Rejections - 35 USC § 112

5. Claims 24,28,29,31,35,39,40,42,44,48,49,51,55,59,60,62-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

i.e.: "take into account the monitoring" and "account number".

6. Claim 43,52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

i.e: sponsored data is treated as preferable.

Examiner consider any selected data as sponsored data and is treated as preferable.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 24-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Bruck et al [Bruck 6,691,165 B1].

7. As per claim 64, Bruck discloses An article of manufacture comprising a computer readable medium containing program code that when executed causes an apparatus to perform:

monitoring an interaction network [Bruck, detection behavior of the machine, col 18 lines 60-67; remote monitoring, col 22 lines 15-31];

selecting data, wherein selection takes into account the monitoring [Bruck, obtain the monitoring information from the display, select Edit menu and parameters set to enable monitoring of the cluster machines, col 22 lines 32-48]; and

sending the selected data over a multicast network [Bruck, multicast, col 27 line 6; the server sends data traffic, col 27 lines 25-46, Fig 16].

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8. As per claim 65, Bruck discloses An article of manufacture comprising a computer readable medium containing program code that when executed causes an apparatus to perform:

providing, via an interaction network, one or more requests [Bruck, detection behavior of the machine, col 18 lines 60-67]; and

receiving, over a multicast network, selected data through a local proxy (i.e.: a server cluster or gateway), wherein selection of the data takes into account monitoring of the interaction network [Bruck, multicast, col 27 line 6; the gateway server cluster initiated or select a port assignment, col 26 lines 51-65].

9. As per claim 44, Bruck discloses An apparatus, comprising:

a memory having program code stored therein [Bruck, the server cluster software, col 8 lines 40-67]; and

a processor disposed in communication with the memory for carrying out instructions in accordance with the stored program code [Bruck, CPU and RAM, col 9 lines 7-34, Fig 6];

wherein the program code, when executed by the processor, causes the processor to perform:

monitoring an interaction network [Bruck, detection behavior of the machine, col 18 lines 60-67; remote monitoring, col 22 lines 15-31];

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selecting data, wherein selection takes into account the monitoring [Bruck, obtain the monitoring information from the display, select Edit menu and parameters set to enable monitoring of the cluster machines, col 22 lines 32-48]; and

sending the selected data over a multicast network [Bruck, multicast, col 27 line 6; the server sends data traffic, col 27 lines 25-46, Fig 16].

10. As per claim 45, Bruck discloses the multicast network is unidirectional [Bruck unicast, col 13 line 61].

11. As per claim 46, Bruck discloses the interaction network is bidirectional [Bruck, exchange of messages, col 25 lines 66].

12. As per claim 47, Bruck discloses in monitoring the interaction network, a predetermined number of requests for a page are recognized [Bruck, predetermined limit value, col 10 line 43; provide Web page to client machine, col 28 lines 17-31], and wherein selecting the data comprises selecting a promotional file [Bruck, receiving file, col 28 lines 40-55].

13. As per claim 48, Bruck discloses selecting the data takes into account number of requests for the data [Bruck, requesting and receiving file, col 28 lines 40-55].

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14. As per claim 49, Bruck discloses selecting the data takes into account number of requests for the data that originate from a broadcast cell [Bruck selecting user actions, col 19 line 67].

15. As per claim 50, Bruck discloses selecting the data comprises prediction based on normal subsequent data choice [Bruck, menu, Fig 13].

16. As per claim 51, Bruck discloses selecting the data takes into account chance of link from requested data being followed [Bruck, available link, Fig 18].

17. As per claim 52, Bruck discloses sponsored data is treated as preferable [Bruck, preference for assignment, col 11 line 56].

18. As per claim 53, Bruck discloses the monitoring comprises employment of a network management agent [Bruck, management network, col 5 line 63].

19. As per claim 54, Bruck discloses the monitoring comprises employment of a proxy [Bruck, firewall 114, Fig 1].

20. Claims 24-34 contain the identical limitations set forth in claims 44-54. Therefore claims 24-34 are rejected for the same rationale set forth in claims 44-54.

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21. As per claim 55 Bruck discloses An apparatus, comprising:

a memory having program code stored therein [Bruck, the server cluster software, col 8 lines 40-67]; and

a processor disposed in communication with the memory for carrying out instructions in accordance with the stored program code [Bruck, CPU and RAM, col 9 lines 7-34, Fig 6];

wherein the program code, when executed by the processor, causes the processor to perform:

providing, via an interaction network, one or more requests [Bruck, detection behavior of the machine, col 18 lines 60-67; remote monitoring, col 22 lines 15-31]; and

receiving, over a multicast network, selected data through a local proxy [Bruck, multicast, col 27 line 6; gateway, col 5 line 39];

wherein selection of the data takes into account monitoring of the interaction network [Bruck, obtain the monitoring information from the display, select Edit menu and parameters set to enable monitoring of the cluster machines, col 22 lines 32-48].

22. As per claim 56, Bruck discloses the multicast network is unidirectional [Bruck, unicast, col 13 line 61].

23. As per claim 57, Bruck discloses the interaction network is bidirectional [Bruck, exchange of messages, col 18 lines 66].

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24. As per claim 58, Bruck discloses in monitoring the interaction network, a predetermined number of requests for a page are recognized [Bruck, predetermined limit value, col 10 line 43; provide Web page to client machine, col 28 lines 17-31], and wherein selection of the data comprises selecting a promotional file [Bruck, receiving file, col 28 lines 40-55].

25. As per claim 59, Bruck discloses selection of the data takes into account number of requests for the data [Bruck, requesting and receiving file, col 28 lines 40-55].

26. As per claim 60, Bruck discloses selection of the data takes into account number of requests for the data that originate from a broadcast cell [Bruck selecting user actions, col 19 line 67].

27. As per claim 61, Bruck discloses selection of the data comprises prediction based on normal subsequent data choice [Bruck, menu, Fig 13].

28. As per claim 62, Bruck discloses selection of the data takes into account chance of link from requested data being followed [Bruck, available link, Fig 18].

29. As per claim 63, Bruck discloses a network interface disposed in communication with the processor, wherein the apparatus is a cellular phone as inherent feature of wireless communication networks [Bruck, col 1 line 30].

30. Claims 35-43 contain the identical limitations set forth in claims 55-63. Therefore claims 35-43 are rejected for the same rationale set forth in claims 55-63.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thong Vu*, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 6:00AM- 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Lynn Feild*, can be reached at (571) 272-2092. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thong Vu
Primary Examiner



THONG VU
PRIMARY PATENT EXAMINER